Senate Bill No. 1004

Passed the Senate September 12, 2003

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Secretary of the Senate

Passed the Assembly September 11, 2003

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Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of

_____, 2003, at _____ o'clock __M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 13271 and 13304 of, and to add Chapter 8.5 (commencing with Section 13610) to Division 7 of, the Water Code, relating to resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1004, Soto. Resources.

(1) Existing law, the Porter-Cologne Water Quality Control Act, with certain exceptions, requires a person who causes or permits any hazardous substance or sewage to be discharged in any waters of the state, or where it may be so discharged or deposited, to immediately notify the Office of Emergency Services. The act makes any person who fails to provide the notice guilty of a misdemeanor that is punishable by a fine of not more than $20,000 or imprisonment for not more than one year, or both.

This bill, for the purposes of this provision, would require the reportable quantity for perchlorate to be 10 pounds or more by discharge to the receiving waters, unless a more restrictive reporting standard is adopted for a particular body of water. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law, the Porter-Cologne Water Quality Control Act, requires a person who discharges waste into the waters of the state in violation of waste discharge requirements or other order or prohibition issued by a California regional water quality control board or the State Water Resources Control Board, upon the order of that regional board or the state board, to clean up the waste or to abate the effects of the waste. The act subjects a person who violates a cleanup or abatement order to civil penalties.

This bill would provide that a cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service to each affected public water supplier or private well owner. The bill would require a regional board or the state board to request a water replacement plan from the discharger prior to the provision of the replacement water in certain cases. The bill would provide for mediation of replacement water claims.

(3) Existing law, with certain exceptions, requires a person who causes or permits any oil or petroleum product to be discharged in any waters of the state, or where it may be so discharged, to immediately notify the Office of Emergency Services. The act makes any person who fails to provide the notice guilty of a misdemeanor that is punishable by a fine of at least $500, and not more than $5,000, for each day of failure to notify.

The act requires each California regional water quality control board, every 3 months, to publish and distribute to all public water system operators within the region a list of discharges of MTBE that occurred during the prior 3-month period and a list of locations where MTBE was detected in the groundwater within the region.

This bill, on or before January 1, 2005, and annually thereafter, subject to certain exceptions, would require an owner or operator of a storage facility that has stored in any calendar year since January 1, 1950, over 500 pounds of perchlorate to submit to the state board, to the extent feasible, certain information relating to that storage. The bill would authorize the State Water Resources Control Board to charge an annual fee to each owner of a storage facility that provides certain information to the board. The fees would be required to be deposited in the State Water Quality Control Fund, to be available to the state board upon appropriation by the Legislature. The bill would require the state board to submit the perchlorate storage information to the Secretary for Environmental Protection upon notification from that secretary that he or she has established a database that is able to receive perchlorate inventory information.

The bill would make persons who fail to provide notifications relating to the discharge or storage of perchlorate civilly liable and would require the funds generated by the imposition of civil liability to be available to the state board, upon appropriation by the Legislature. The bill would require the state board to publish, compile, maintain, and make available for public review the information relating to the storage of perchlorate.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 13271 of the Water Code is amended to read:

13271. (a) (1) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state toxic disaster contingency plan adopted pursuant to Article 3.7 (commencing with Section 8574.16) of Chapter 7 of Division 1 of Title 2 of the Government Code.

(2) The Office of Emergency Services shall immediately notify the appropriate regional board and the local health officer and administrator of environmental health of the discharge. The regional board shall notify the state board as appropriate.

(3) Upon receiving notification of a discharge pursuant to paragraph (2), the local health officer and administrator of environmental health shall immediately determine whether notification of the public is required to safeguard public health and safety. If so, the local health officer and administrator of environmental health shall immediately notify the public of the discharge by posting notices or other appropriate means. The notification shall describe measures to be taken by the public to protect the public health.

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.

(c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not more than twenty thousand dollars ($20,000) or imprisonment for not more than one year, or both. Except where

a discharge to the waters of this state would have occurred but for cleanup or emergency response by a public agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state.

(d) Notification received pursuant to this section or information obtained by use of that notification shall not be used against any person providing the notification in any criminal case, except in a prosecution for perjury or giving a false statement.

(e) For substances listed as hazardous wastes or hazardous material pursuant to Section 25140 of the Health and Safety Code, the state board, in consultation with the Department of Toxic Substances Control, shall by regulation establish reportable quantities for purposes of this section. The regulations shall be based on what quantities should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations need not set reportable quantities on all listed substances at the same time. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division, and shall not supersede or affect in any way the list, criteria, and guidelines for the identification of hazardous wastes and extremely hazardous wastes adopted by the Department of Toxic Substances Control pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The regulations of the Environmental Protection Agency for reportable quantities of hazardous substances for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) shall be in effect for purposes of the enforcement of this section until the time that the regulations required by this subdivision are adopted.

(f) (1) The state board shall adopt regulations establishing reportable quantities of sewage for purposes of this section. The regulations shall be based on the quantities that should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division. For purposes of this section, ‘‘sewage’’ means the effluent of a municipal wastewater treatment plant or a private

utility wastewater treatment plant, as those terms are defined in Section 13625, except that sewage does not include recycled water, as defined in subdivisions (c) and (d) of Section 13529.2.

(2) A collection system owner or operator, as defined in paragraph (1) of subdivision (a) of Section 13193, in addition to the reporting requirements set forth in this section, shall submit a report pursuant to subdivision (c) of Section 13193.

(g) Except as otherwise provided in this section and Section 8589.7 of the Government Code, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency. When notifying the Office of Emergency Services, the person shall include all of the notification information required in the permit.

(h) For the purposes of this section, the reportable quantity for perchlorate shall be 10 pounds or more by discharge to the receiving waters, unless a more restrictive reporting standard for a particular body of water is adopted pursuant to subdivision (e).

SEC. 2. Section 13304 of the Water Code is amended to read:

13304. (a) Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

(b) (1) The regional board may expend available money to perform any cleanup, abatement, or remedial work required under the circumstances set forth in subdivision (a), including, but not limited to, supervision of cleanup and abatement activities that, in its judgment, is required by the magnitude of the endeavor or the urgency for prompt action to prevent substantial pollution, nuisance, or injury to any waters of the state. The action may be taken in default of, or in addition to, remedial work by the waste discharger or other persons, and regardless of whether injunctive relief is being sought.

(2) The regional board may perform the work itself, or with the cooperation of any other governmental agency, and may use rented tools or equipment, either with operators furnished or unoperated. Notwithstanding any other provisions of law, the regional board may enter into oral contracts for the work, and the contracts, whether written or oral, may include provisions for equipment rental and in addition the furnishing of labor and materials necessary to accomplish the work. The contracts are not subject to approval by the Department of General Services.

(3) The regional board shall be permitted reasonable access to the affected property as necessary to perform any cleanup, abatement, or other remedial work. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting public health or safety, the regional board may enter the property without consent or the issuance of a warrant.

(4) The regional board may contract with a water agency to perform, under the direction of the regional board, investigations of existing or threatened groundwater pollution or nuisance. The agency's cost of performing the contracted services shall be reimbursed by the regional board from the first available funds obtained from cost recovery actions for the specific site. The authority of a regional board to contract with a water agency is limited to a water agency that draws groundwater from the affected aquifer, a metropolitan water district, or a local public agency responsible for water supply or water quality in a groundwater basin.

(c) (1) If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.

(2) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, that identifies the property on which the condition was abated, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien has the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the notice of lien, and shall continue for 10 years from the time of the recording of the notice, unless sooner released or otherwise discharged. Not later than 45 days after receiving a notice of lien, the owner may petition the court for an order releasing the property from the lien or reducing the amount of the lien. In this court action, the governmental agency that incurred the cleanup costs shall establish that the costs were reasonable and necessary. The lien may be foreclosed by an action brought by the state board on behalf of the regional board for a money judgment. Money recovered by a judgment in favor of the state board shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(d) If, despite reasonable effort by the regional board to identify the person responsible for the discharge of waste or the condition of pollution or nuisance, the person is not identified at the time cleanup, abatement, or remedial work is required to be performed, the regional board is not required to issue an order under this section.

(e) ‘‘Threaten,’’ for purposes of this section, means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.

(f) Replacement water provided pursuant to subdivision (a) shall meet all applicable federal, state, and local drinking water standards, and shall have comparable quality to that pumped by the public water system or private well owner prior to the discharge of waste.

(g) (1) Any public water supplier or private well owner receiving replacement water by reason of an order issued pursuant to subdivision (a), or any person or entity who is ordered to provide replacement water pursuant to subdivision (a), may request nonbinding mediation of all replacement water claims.

(2) If so requested, the public water suppliers receiving the replacement water and the persons or entities ordered to provide the replacement water, within 30 days of the submittal of a water replacement plan, shall engage in at least one confidential settlement discussion before a mutually acceptable mediator.

(3) Any agreement between parties regarding replacement water claims resulting from participation in the nonbinding mediation process shall be consistent with the requirements of any cleanup and abatement order.

(4) A regional board or the state board is not required to participate in any nonbinding mediation requested pursuant to paragraph (1).

(5) The party or parties requesting the mediation shall pay for the costs of the mediation.

(h) As part of any cleanup and abatement order that requires the provision of replacement water, a regional board or the state board shall request a water replacement plan from the discharger in cases where replacement water is to be provided for more than 30 days. The water replacement plan is subject to the approval of the regional board or the state board prior to its implementation.

(i) A “water replacement plan’’ means a plan pursuant to which the discharger will provide replacement water in accordance with a cleanup and abatement order.

(j) This section does not impose any new liability for acts occurring before January 1, 1981, if the acts were not in violation of existing laws or regulations at the time they occurred.

(k) Nothing in this section limits the authority of any state agency under any other law or regulation to enforce or administer any cleanup or abatement activity.

(*l*) The Legislature declares that the amendments made to subdivision (a) of this section by Senate Bill 1004 of the 2003–04 Regular Session do not constitute a change in, but are declaratory of, existing law.

SEC. 3. Chapter 8.5 (commencing with Section 13610) is added to Division 7 of the Water Code, to read:

CHAPTER 8.5. PERCHLORATE

13610. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this chapter:

(a) ''Perchlorate'' means all perchlorate-containing compounds, including ammonium, potassium, magnesium, and sodium perchlorate not found on or after January 1, 2004, in unused military munitions as defined in Section 260.10 of Title 40 of the Code of Federal Regulations.

(b) Subject to Section 13610.5, ''perchlorate storage facility'' means a facility, not including a military munitions storage facility within a military installation that meets the Department of Defense Explosive Safety Board requirements set forth in DOD 605.9-STD, that stores over 500 pounds of perchlorate in any calendar year.

(c) For the purposes of this section, ''military munitions storage facility'' does not include the entire military installation within which the military munitions storage facility is located.

13610.5. This chapter does not apply to the following:

(a) A facility that stores perchlorate for retail purposes or for law enforcement purposes.

(b) Drinking water storage reservoirs.

13611. (a) The notification required by Section 13611.5 does not apply to a discharge that is in compliance with this division, or to a water agency conveying water in compliance with all state and federal drinking water standards.

(b) Any person who fails to provide the notifications required by Section 13271 relating to perchlorate or by Section 13611.5 may be civilly liable in accordance with subdivision (c).

(c) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation described in subdivision (b) in an amount that does not exceed one thousand dollars ($1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 11350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation described in subdivision (b) in an amount that is not less than five hundred dollars ($500), or more than five thousand dollars ($5,000), for each day in which the violation occurs.

(d) Notwithstanding Section 13341, all money collected by the state pursuant to this section shall be available to the state board upon appropriation by the Legislature.

13611.5. (a) On or before January 1, 2005, and annually thereafter, unless the owner or operator has met the alternative compliance requirements of subdivision (b), an owner or operator of a storage facility that has stored in any calendar year since January 1, 1950, over 500 pounds of perchlorate shall submit to the state board, to the extent feasible, all of the following information:

(1) The volume of perchlorate stored each year.

(2) The method of storage.

(3) The location of storage. To the extent authorized by federal law, in the case of a perchlorate storage facility under the control of the Armed Forces of the United States, ‘‘location’’ means the name and address of the property within which the perchlorate storage facility is located.

(4) Copies of documents relating to any monitoring undertaken for potential leaks into the water bodies of the state.

(b) The owner or operator of a storage facility that has stored in any calendar year since January 1, 1950, over 500 pounds of perchlorate, is in compliance with this section if both of the following conditions are met:

(1) The owner or operator has provided substantially similar information as required pursuant to subdivision (a) to a state, local, or federal agency pursuant to any of the following:

(i) An order issued by a regional board pursuant to Chapter 5 (commencing with Section 13300) of Division 7.

(ii) An order, consent order, or consent decree issued or entered into by the Department of Toxic Substances Control pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(iii) An an order, consent order, or consent decree issued or entered into by the United States Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(iv) The requirement under Section 25504.1 of the Health and Safety Code, as added by Assembly Bill 826 of the 2003–04 Regular Session.

(2) The owner or operator, on or before January 1, 2005, and annually thereafter, notifies the state board of the governmental entity to which the information is provided and the state board determines the information supplied is substantially similar as the information required to be reported pursuant to subdivision (a). In the case of any information submitted to a federal or local agency, the state board may require the owner or operator, in addition, to submit that information to the state board if the state board determines that the information is not otherwise reasonably available to the state board.

(c) This section shall not be administered or implemented if the state board receives notification from the Secretary for Environmental Protection pursuant to Section 13613 that the Secretary for Environmental Protection has established a database that is able to receive perchlorate inventory information.

(d) Information on perchlorate storage need only be submitted pursuant to this section one time, unless information originally submitted pursuant to this section has changed.

13612. (a) The state board shall publish and make available to the public on or before January 1, 2006, a list of past and present perchlorate storage facilities within the state. The state board may charge an annual fee to each owner of a storage facility that provides information to the board for that purpose, which fee shall not exceed one hundred dollars ($100) for each year information is provided. The fees shall be deposited in the State Water Quality Control Fund, and notwithstanding any other provision of law,

shall be available to the state board upon appropriation by the Legislature.

(b) The state board shall compile and maintain centrally all information obtained pursuant to Section 13611.5. The information shall be available for public review.

13613. Upon notification from the Secretary for Environmental Protection that he or she has established a database that is able to receive perchlorate inventory information pursuant to paragraph (2) of subdivision (e) of Section 25404 of the Health and Safety Code, the state board shall submit to the Secretary for Environmental Protection all perchlorate storage information obtained pursuant to Section 13611.5.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2003

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Governor